

BREEN OLSON & TRENTON, LLP

Dennis M. Breen, III
John E. Olson
4720 North Oracle Road, Suite 100
Tucson, Arizona 85705
(520) 742-0808
dennis@botlawfirm.com

State Bar # 005309
Attorney for Movant

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

IN RE:

NIMBUS BREWING COMPANY, L.L.C.,

Debtor.

No.: 4:12-bk-08122-EWH

Chapter 11 Proceeding

**KEG CREDIT, L.L.C.'S OBJECTION TO
CONFIRMATION OF DEBTOR'S PLAN
OF REORGANIZATION**

Keg Credit, L.L.C., by and through undersigned counsel, hereby objects to the confirmation of Debtor's Chapter 11 Plan of Reorganization dated December 18, 2012, and Debtor's First Amended Plan of Reorganization dated September 12, 2013, and for reasons therefor states as follows:

FACTUAL BACKGROUND

1. The Debtor filed a petition under chapter 11 on April 17, 2012
2. On October 5, 2012, Debtor entered into an Equipment Lease with Keg Credit, L.L.C., for 804 Stainless Steel Kegs [see Lease attached Exhibit A], and failed to disclose to Keg Credit that Debtor was currently in a Chapter 11 Bankruptcy Proceeding.

1 3. Debtor, likewise, did not seek, nor obtain, approval of the Bankruptcy Court prior to
2 incurring new debt in the course of its Bankruptcy proceeding;

3 4. Debtor is in default on the obligation under the Equipment Lease to Keg Credit, L.L.C.,
4 and four monthly payments in the total amount of \$11,812.00 are currently due under the
5 lease. Debtor was to lease the kegs for a term of no less than 18 months, and 30% of the
6 monthly lease payment of \$2,362.40 was to apply to the total purchase price of
7 \$99,312.00, if Debtor chose to purchase them;
8

9
10 **LEGAL ARGUMENT**
11

12 The Debtor failed to include Keg Credit, L.L.C. in its Plan of Reorganization dated
13 December 18, 2012, and in the Debtor's First Amended Plan of Reorganization dated September
14 12, 2013. Pursuant to 11 U.S.C. §365(d)(5), Keg Credit, L.L.C. is automatically entitled to
15 administrative expense treatment for all rental obligations that accrued from the 60th day after the
16 petition was filed until the date the equipment is surrendered. The Petition was filed April 17,
17 2012, and the Equipment Lease for 804 Stainless Steel Kegs was entered into October 5, 2012,
18 some 171 days after the filing of the Petition. Debtor's Plan of Reorganization and First
19 Amended Plan of Reorganization violate 11 U.S.C. §365(d)(5), which makes it clear that the
20 Debtor shall perform all obligations under a lease at the contract rate until the lease is rejected.
21

22 Pursuant to the general provisions of 11 U.S.C. §503(b), Keg Credit, L.L.C. is entitled to the
23 assertion of a claim for payments due under the lease. Keg Credit, L.L.C.'s claim for lease
24 payments due under 11 U.S.C. §365(d)(5) is still a claim for an administrative expense under
25 §503(b) because it bears the two characteristics of an administrative expense (the right to
26

KEG CREDIT, L.L.C.'S OBJECTION TO CONFIRMATION OF DEBTOR'S PLAN OF REORGANIZATION

1 payment arises after the filing of the petition, and the estate receives beneficial consideration
2 because the estate has the opportunity to use the property, and is using the property. The
3 Debtor's Plan and Amended Plan not only fail to provide for the payment of Keg Credit,
4 L.L.C.'s claim for lease payments as an administrative expense, it fails to mention the debt and
5 the treatment of Keg Credit, L.L.C.'s claim all together. Debtor failed to list Keg Credit, L.L.C.'s
6 equipment lease on Schedule G of the Debtor's bankruptcy Schedules, and has also failed to
7 accept or reject the lease. Debtor is still in possession of the 804 Stainless Steel Kegs, and is
8 using them daily in their business operation.
9

10
11 **WHEREFORE**, Keg Credit respectfully requests that the Debtor's Plan of Confirmation
12 be denied or modified to properly acknowledge Keg Credit, L.L.C.'s claim for rent of the 804
13 kegs as an administrative expense, and then either accepts the lease, or rejects the lease and
14 surrenders the kegs to Keg Credit, L.L.C.
15

16 **RESPECTFULLY SUBMITTED** this 21st day of October, 2013.
17

18 **BREEN OLSON & TRENTON, LLP**
19

20 /s/Dennis M. Breen, III, State Bar No. 005309
21 Dennis M. Breen, III,
22 Attorney for Debtor

23 Original filed this 21st day of October, 2013, with:

24 Clerk of the United States Bankruptcy Court
25 District of Arizona
26 James A. Walsh Courthouse
38 S. Scott Avenue
Tucson, AZ 85701

KEG CREDIT, L.L.C.'S OBJECTION TO CONFIRMATION OF DEBTOR'S PLAN OF REORGANIZATION

1 and a copy mailed this 21st day of October, 2013, via
2 Prepaid First Class U.S. Mail to:

3 United State Trustee
4 Department of Justice
5 230 N. First Avenue, Ste. 204
6 Phoenix, AZ 85003

7 Eric Slocum Sparks
8 Law Offices of Eric Slocum Sparks, P.C.
9 110 South Church Avenue, #2270
10 Tucson, AZ 85701

11 And all other interested parties as listed on the Master
12 Mailing Matrix attached as Exhibit "A."

13 /s/ Stacey Crom
14 Stacey Crom

15
16
17
18
19
20
21
22
23
24
25
26

KEG CREDIT, L.L.C.'S OBJECTION TO CONFIRMATION OF DEBTOR'S PLAN OF REORGANIZATION